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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DWEN EDWARD CURRY,

16 Defendant.
17

No. CR 15-666-JFW

GOVERNMENT'S SENTENCING POSITION

Hearing Date: November 3, 2016
Hearing Time: 10:30 a.m.

18
19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Bruce K. Riordan,
22 hereby files its sentencing position with respect to defendant Dwen
23 Edward Curry.
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1 This sentencing position is based upon the attached memorandum
2 of points and authorities, the files and records in this case, and
3 such further evidence and argument as the Court may permit.

4 Dated: November 2, 2016

Respectfully submitted,

5 EILEEN M. DECKER
6 United States Attorney

7 LAWRENCE S. MIDDLETON
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/
11 _____
12 BRUCE K. RIORDAN
13 Assistant United States Attorney

14 Attorneys for Plaintiff
15 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

On October 31, 2016, defendant Dwen Edward Curry ("defendant") admitted allegations two, three and four in the Probation Office's Petition against her.¹ After the Court accepted the admissions, the government moved to dismiss allegations one and five and the Court granted the motion, dismissing those allegations. The Court provided defendant additional time to file a sentencing position, which defendant did on November 2, 2016. The Court also stated that the government could either respond in writing by close of business on November 2, or orally at the sentencing hearing on November 3.

On November 2, defendant filed a position paper asking the Court to sentence defendant to "one year and one day in custody." (Defendant's Sentencing Position at 6.) For the reasons set forth below, the government's position is that a custodial sentence at the low-end of the applicable Guidelines range, namely eighteen months' imprisonment, is appropriate and sufficient, but not greater than necessary, to further the interests of justice.

II. FACTUAL BACKGROUND

The facts are contained in the Probation Officer's March 7, 2016 letter ("Probation Letter") to the Court. The government adopts those facts and incorporates them into its recommendation. The government has also read and considered both defendant's sentencing position and defendant's "Amended Pre-Plea Presentence Investigation Report" ("PIR") from the underlying criminal case, which is attached to the Probation Letter.

¹ Defendant's preferred identification is female.

1 **III. THE GOVERNMENT'S POSITION: A SENTENCE AT THE LOW-END OF THE**
2 **GUIDELINES RANGE IS REASONABLE AND APPROPRIATE**

3 The government agrees with the Probation Office's calculations
4 set forth in the "Revocation Sentencing Considerations Chart"
5 attached to the Probation Letter. Based on those calculations, along
6 with a review of the materials described in Section II above, the
7 government's position is that a guidelines custodial sentence is
8 warranted in this case. The government recommends that defendant be
9 sentenced to a custodial term within the applicable Guidelines range,
10 namely, eighteen months' imprisonment.

11 The government will expand on this recommendation at the time of
12 hearing should the Court so direct. For the purposes of this filing,
13 the government is basing its low-end recommendation on several
14 aggravating factors, balanced by two mitigating factors. The
15 aggravating factors are:

- 16 • Defendant's very clear breach of the District Court's trust
17 by committing a variation of the same financial crime for
18 which she was convicted in 2011. This conduct, along with
19 the description of the Probation Officer's interactions
20 with defendant in the Probation Letter demonstrates that
21 defendant has not yet shown an effort to rehabilitate.
- 22 • The underlying criminal conduct involves crimes with actual
23 victim impact and therefore does represent a danger to the
24 community. The crimes may not be violent ones, but that
25 does not mean that they are without significance. Identity
26 theft crimes of this sort victimize innocent people and
27 cause other repercussions throughout society, making people
28 feel vulnerable and unsafe in their private activities. In

1 other words, while the defendant's papers make much of her
2 own vulnerabilities, her criminal conduct exploits the
3 vulnerabilities of others.

- 4 • Finally, there is the frequency and nature of defendant's
5 criminal history. The frequency of the criminal history
6 described in the PIR speaks for itself, but it is also the
7 continued nature of defendant's invasive and intrusive
8 financial crimes that strongly suggests that defendant is
9 on a track to becoming a career criminal.

10 With those aggravating factors in mind, the government does
11 temper its recommended sentence by two potentially mitigating
12 factors:

- 13 • This is defendant's first offense in front of this Court
14 and the first breach of this Court's trust.
- 15 • Government counsel has had the opportunity to observe
16 defendant's demeanor and her statements during his
17 admissions before this Court on October 31, and to read
18 defendant's sentencing appears and does believe that the
19 defendant demonstrated an acceptance of responsibility and
20 an appreciation of the gravity of her current situation.

21 With those various factors in mind, the government recommends a
22 low-end guidelines sentence of 18-months. Absent the mitigating,
23 factors, the government would likely have recommended a longer
24 sentence. But, on balance, in the government's view, a low-end
25 guidelines sentence of 18-month is appropriate here.

26 **IV. CONCLUSION**

27 For the foregoing reasons, a custodial sentence of eighteen
28 months is sufficient, but not greater than necessary, to punish

